

STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

October 27, 2022

Agenda ID #21088

and

Alternate to Agenda ID #21087

Ratesetting

TO PARTIES OF RECORD IN APPLICATION 21-11-010:

Enclosed are the proposed decision of Administrative Law Judge Karl J. Bemmesderfer previously designated as the presiding officer in this proceeding and the alternate proposed decision of Commissioner Darcie L. Houck. The proposed decision and the alternate proposed decision will not appear on the Commission's agenda sooner than 30 days from the date they are mailed.

Pub. Util. Code § 311(e) requires that the alternate item be accompanied by a digest that clearly explains the substantive revisions to the proposed decision. The digest of the alternate proposed decision is attached.

This matter was categorized as ratesetting and is subject to Pub. Util. Code § 1701.3(c). Upon the request of any Commissioner, a Ratesetting Deliberative Meeting (RDM) may be held. If that occurs, the Commission will prepare and publish an agenda for the RDM 3 days beforehand. When an RDM is held, there is a related ex parte communications prohibition period. (See Rule 8.2(c)(4).)

When the Commission acts on these agenda items, it may adopt all or part of the decision as written, amend or modify them, or set them aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision and alternate decision as provided in Pub. Util. Code §§ 311(d) and 311(e) and in Article 14 of the Commission's Rules of Practice and Procedure (Rules),

~~accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed [15] pages.~~

~~Comments must be filed pursuant to Rule 1.13 and served in accordance with Rules 1.9 and 1.10. Electronic copies of comments should be sent to Commissioner Houck's advisor Eileen Odell at eileen.odell@cpuc.ca.gov. The current service list for this proceeding is available on the Commission's website at www.cpsc.ca.gov.~~

~~/s/ MICHELLE COOKE~~

~~Michelle Cooke~~

~~Acting Chief Administrative Law Judge~~

~~MLC:jnf~~

~~Attachment~~

DIGEST OF DIFFERENCES BETWEEN ADMINISTRATIVE LAW JUDGE KARL J. BEMESDERFER'S PROPOSED DECISION AND THE ALTERNATE PROPOSED DECISION OF COMMISSIONER HOUCK

The alternate proposed decision finds that Zenith is a public utility based on interpretation of whether Zenith is a pipeline corporation, as defined in Public Utilities Code Section 228: "'Pipeline corporation' includes every person owning, controlling, operating, or managing any pipeline for compensation within this state."

The proposed decision grants Zenith's request to remove its designation as a public utility.

The alternate proposed decision denies Zenith's request to remove its designation as a public utility. The alternate proposed decision concludes that since Zenith manages and controls its pipeline system to transport and store oil products for others, the pipeline system is a pipeline corporation. Zenith owns and operates approximately ~~120~~127 miles of pipelines in the Los Angeles area, of which 52 are operational, which carry oil owned by third parties, primarily oil ~~producers~~refineries, to and from its ~~terminal~~terminals in ~~Carson~~Alamitos, Compton and Long Beach. While Zenith claims it does not charge its customers a separate fee for transporting their oil in its pipelines, it is reasonable to assume that the costs of transportation are reflected in the compensation Zenith receives for storing the oil.

The alternate proposed decision also finds that the pipeline system in question was deemed a public utility in 1994, well after the warehouseman statute was repealed in 1980. Had the legislature wanted to exempt companies like Zenith from Commission jurisdiction, it could have made that clear amending the definition of pipeline.

Finally, the alternate proposed decision notes that there are sound policy reasons for denying this application. As the legislative history referenced in Zenith's application makes clear, the determination of whether an economic activity is within the Commission's jurisdiction is a question for the legislature.

ATTACHMENT

Decision **ALTERNATE PROPOSED DECISION OF**
COMMISSIONER HOUCK (Mailed 10/27/2022)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application by Zenith Energy West
Coast Terminals LLC (PLC-28) to
Remove Public Utility Designation.

Application 21-11-010

ALTERNATE DECISION DENYING APPLICATION

Summary

We deny the Application of Zenith Energy West Coast Terminals LLC to have its designation as a public utility removed.

1. Background

Zenith Energy West Coast Terminals LLC (PPLC-28) (Zenith or Applicant) owns and operates certain oil pipeline and storage facilities (pipeline system) in ~~Carson, California~~ [Alamitos, Compton and Long Beach](#). Zenith provides oil storage and transportation service to third-party users pursuant to the terms of a Commission-approved tariff which allows for negotiated contracts between Zenith and its customers.¹ Zenith's pipeline system includes ~~120~~[127](#) miles of pipeline, [of which 52 miles are operational](#), with connections to a marine berth at

¹ ~~Cite Tariff~~ [Zenith's customers are oil refineries in the Los Angeles area](#). The Commission approved tariff "applies to the to the receipt, terminaling, storage and pipeline distribution of black oil by Zenith."

the Port of Long Beach, [Zenith-owned terminals in Alamitos and Compton](#), and to Los Angeles area refineries and

associated

pumping and heating stations. Oil is moved in the Zenith-owned pipelines between these locations as well as in and out of storage tanks. The Zenith-owned pipelines may also interconnect with (public or private) oil pipelines owned or operated by third parties. According to Zenith, it does not charge for transportation of third party oil to or from its terminal or from one storage tank to another within the terminal.

The pipeline system was originally built by Southern California Edison Company (SCE) to supply its electric generation stations. After being underutilized for this purpose, in Decision (D.) 94-10-044, the Commission granted SCE's application to encumber the pipeline system for revenue generation via third-party use.² In doing so, the Commission found that SCE's third-party oil transportation and storage services were pipeline corporation activities subject to its jurisdiction, which is the interpretation the Commission has maintained to-date.³

In 2003, Pacific Terminals LLC (Pacific) acquired the pipeline system from SCE.⁴ At the time, Pacific was a wholly-owned subsidiary of Pacific Energy Group LLC (PEG), which in turn was a wholly-owned subsidiary of Pacific Energy Partners, L.P. (PEP). In D.06-09-017, the Commission authorized Plains All American Pipeline, L.P. (Plains) to acquire control of Pacific by means of Plains' acquisition of PEG through a merger of Plains and PEP.

In D.09-01-011, the Commission approved the transfer of Pacific, from PEG to Plains Marketing, L.P. (Plains Marketing) as part of an internal corporate reorganization. Ultimate ownership and control of Pacific and the pipeline

² D.94-10-004.

³ D.94-10-044, at Ordering Paragraph (OP) 1;

⁴ D.03-07-031.

system remained with Plains, the parent company of both PEG and Plains Marketing. It also approved the change of Pacific's name to "Plains West Coast Terminals LLC" (Plains West).

Most recently, the Commission approved Zenith's acquisition of the pipeline system from Plains West.⁵ The pipeline system retained its public utility designation after the sale to Zenith without objection from Zenith. After purchasing the pipeline system from Plains West, Zenith filed this application to have its public utility designation removed. There were no protests to the application.

Section 5 of the Scoping Ruling issued on February 14, 2022, directed Zenith to answer four specific questions regarding its operation of the Terminal. Zenith provided answers to all four questions in a response filed on February 28, 2022, which response was supplemented by three confidential exhibits accompanied by a motion for confidential treatment. In an email dated August 3, 2022, the Administrative Law Judge (ALJ) confirmed to Zenith that its responses were complete and pursuant to the terms of the Scoping Ruling, the matter stands submitted as of August 3, 2022.

2. Issues Before the Commission

The sole issue for decision in this case is whether Zenith is a public utility as defined in Public Utilities (Pub. Util.) Code Section 216(a)(1): "'Public utility' includes every...pipeline corporation...where the service is performed for...the public or any portion thereof."

⁵ D.20-01-013.

3. Discussion and Analysis

To be a public utility as defined, Zenith must be a pipeline corporation, as defined in Pub. Util. Code Section 228:

“Pipeline corporation” includes every person owning, controlling, operating, or managing any pipeline for compensation within this state.

Further, what the corporation owns, controls, operates or manages must meet the definition of a pipeline in Pub. Util. Code Section 227:

“Pipe line” [sic] includes all real estate, fixtures, and personal property, owned, controlled, or managed in connection with or to facilitate the transmission, storage, distribution or delivery of crude oil....

Since Zenith manages and controls its pipeline system to transport and store oil products for others, the pipeline system is a pipeline corporation. As noted above, Zenith owns and operates approximately ~~120~~127 miles of pipelines in the Los Angeles area, of which 52 miles are currently operational, which carry oil owned by third parties, primarily oil ~~producers~~refineries, to and from its ~~terminal~~terminals in ~~Carson~~Alamitos, Compton and Long Beach. While Zenith claims it does not charge its customers a separate fee for transporting their oil in its pipelines, it is reasonable to assume that the costs of transportation are reflected in the compensation Zenith receives for storing the oil.

Furthermore, it is immaterial whether Zenith is compensated for transportation and/or storage services. Pub. Util. Code Section 228 does not make that distinction. What matters is that Zenith owns and is operating a pipeline in connection with or to facilitate the transmission, storage, distribution or delivery of crude oil for compensation. With that understanding, it is clear that Zenith is a pipeline corporation as defined in Pub. Util. Code Sections 227 and 228 and therefore a public utility subject to the Commission’s jurisdiction.

As Zenith pointed out in its application, in 1951, when these sections of the Pub. Util. Code were enacted, oil storage operators were included in the definition of “warehousemen” in Pub. Util. Code Section 239(a) as

[e]very corporation or person owning, controlling, operating, or managing any building or structure in which property is regularly stored for compensation within this State in connection with or to facilitate the transportation of property by a common carrier or vessel....

In 1955, the Legislature revised the definition of “warehouseman” to expressly exempt those storing, loading, or unloading “liquid petroleum commodities in bulk” from Commission jurisdiction.⁶ While the proposed decision finds that this action by the legislature removed certain activities from Commission jurisdiction, that interpretation of the legislature’s action as it applies to Zenith is mistaken. Zenith is a pipeline corporation that operates an oil storage terminal.

At most, the 1955 amendment to the Pub. Util. Code exempted operators of storage facilities that are not also pipeline corporations from Commission jurisdiction, while retaining public utility status for pipeline corporations such as Zenith. Furthermore, the pipeline system in question was deemed a public utility in 1994, well after the warehouseman statute was repealed in 1980. Had the legislature wanted to exempt companies like Zenith from Commission jurisdiction, it could have made that clear by amending the definition of pipeline.

There are also sound policy reasons for denying this application. As the legislative history referenced in Zenith’s application makes clear, the determination of whether an economic activity is within the Commission’s jurisdiction is a question for the legislature. We cannot grant the application

⁶ Stats. 1955 ch 1091.

without infringing on the legislature's authority to determine what constitutes a public utility.

4. Comments on Alternate Proposed Decision

The proposed alternate decision of Commissioner Houck in this matter was mailed to the parties in accordance with Section 311(d) of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on November 26, 2022, ~~and. There were no~~ reply comments ~~were filed on~~ November 26, 2022.

5. Assignment of Proceeding

Darcie L. Houck is the assigned Commissioner in this proceeding and Karl J. Bemederfer is the assigned ALJ in this proceeding.

Findings of Fact

1. Zenith Energy West Coast Terminals LLC owns and operates certain oil pipeline and storage facilities in ~~Carson~~ Alamitos Compton and Long Beach, California.

2. Zenith owns 127 miles of pipelines in the Los Angeles area, of which 52 miles are currently operational.

3. 2- The pipeline and storage facilities are connected to customer lines and storage facilities in Los Angeles County through ~~120 miles of~~ the operational Zenith pipelines.

4. 3- Zenith charges its customers fees for storing their oil.

5. 4- Zenith does not charge its customers a separate fee for transporting their oil to and from ~~the Carson terminal~~ its terminals.

Conclusions of Law

1. Zenith is a "pipeline corporation" as defined in Pub. Util. Code Section 228.

2. Zenith is a public utility.
3. The application should be denied.

O R D E R

IT IS ORDERED that:

1. The application of Zenith Energy West Coast Terminals LLC to have its public utility designation removed is denied.
2. Zenith's Motion for Leave to File Under Seal Confidential Attachments A, B, and C of the Response to Scoping Memo Questions filed on February 28, 2022, is granted. Attachments A, B and C shall remain under seal for a period of two years from the effective date of this decision and shall not be made accessible or disclosed to anyone other than the Commission and its staff, except upon further order or ruling of the Commission.
3. Application 21-11-010 is closed.

This decision is effective today.

Dated _____, San Francisco, California.

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